

California Regional Water Quality Control Board
Santa Ana Region

September 17, 2004

ITEM: 8

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Duane Burk, 31225 Linwood Terrace, Yucaipa, San Bernardino County, APN 300-551-09

DISCUSSION:

On August 17, 2004, Duane Burk contacted staff requesting an exemption from the Board's minimum lot size requirements for the use of a septic tank-subsurface disposal system on a 0.5-acre lot at 31225 Linwood Terrace, Yucaipa. Mr. Burk wishes to install a second home (temporary dependent housing or TDH) on this lot.

There is currently a 3-bedroom, 2.5-bath home on the lot that is connected to an existing 1,500-gallon septic tank-subsurface disposal system. This area of Yucaipa is unsewered. Mr. Burk would like to construct a second home/TDH on the lot, where he could care for his mother. He proposes to connect this second home/TDH to his existing septic system.

On October 13, 1989, the Regional Board adopted Resolution No. 89-157, which requires new developments for which on-site subsurface disposal system use is proposed to have a minimum one-half acre of land per dwelling unit. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwater of the Region. Mr. Burk's proposed development is a new development as defined in Resolution No. 89-157 and is therefore subject to the minimum lot size requirements specified therein. With a density of 0.25 acres per dwelling unit, Mr. Burk's proposal does not comply with the Board's minimum lot size requirements. Accordingly, Board staff denied Mr. Burk's request for an exemption from the minimum lot size requirements.

The minimum lot size exemption criteria to be used by Board staff specify that replacement of existing septic tank-subsurface disposal systems to allow additional flows resulting from additions to existing dwelling units is exempt from the one half acre requirement. However, the Board's exemption criteria specifically state that such an exemption does not apply to the addition of freestanding structures, such as a second home on the Burk property. In establishing the exemption criteria, the Board made this distinction because of the potential that the addition of freestanding structures could result, either immediately or in the future, in substantially greater wastewater flows than would be expected as the result of additions to an existing dwelling.

Mr. Burk notes that the additional flows that would occur as a result of this project would be no greater than the flows that would be allowed if he were to add on to the existing house and replace the existing septic tank to accommodate the increased flows, which would be exempt from the minimum lot size criteria. On this basis, Mr. Burk is appealing to the Regional Board for reversal of staff's denial of an exemption from the minimum lot size requirements.

While it is true that there would be no difference in wastewater flows on an immediate basis, i.e., while Mr. Burk owns the property and his mother resides with him, there is no guarantee that wastewater flows would not increase considerably in the future. As stated above, it was on this basis that the Board determined not to exempt the addition of freestanding structures from the minimum lot size requirements. However, this is an exceptional case in that the proposed additional structure is a temporary dependent housing that the City will require to be removed once the dependent is no longer using the housing, as a condition of permit approval. Furthermore, as part of permit approval, the City of Yucaipa will require Mr. Burk to enter into an Agreement of Restriction with the City of Yucaipa which shall be recorded with the property Chain of Title that stipulates that this property may not be sold until the second home has been removed. Mr. Burk has offered to remove the second home from the property once it is no longer required. In addition, the City of Yucaipa will issue Mr. Burk a Special Use Permit for temporary dependent housing that Mr. Burk will have to renew every two years. Failure to renew the TDH permit or remove the second house at the end of the approved time period will result in legal action to remove the unit.

RECOMMENDATION:

Approve Mr. Burk's request for an exemption from the minimum lot size requirement specified in Resolution No. 89-157 with the following stipulations: 1) Once the second home/TDH is no longer required for use of the Burk family, it shall be removed from the property, and 2) Mr. Burk must enter into an Agreement of Restriction with the City of Yucaipa, which shall become a part of the Chain of Title, that the second home must be removed prior to sale of the property or whenever it is no longer required for the use of his mother, whichever occurs first. A copy of the Agreement of Restriction shall be provided to the Regional Board.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of Chief Counsel – Jorge Leon
San Bernardino County Environmental Health Services – Mike Farrell/Ray Britain
San Bernardino County Department of Building and Safety – Barbara Johnston
City of Yucaipa Building and Safety
City of Yucaipa Planning